

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 16 2014

OFFICE OF  
MANAGING DIRECTOR

Mr. Jeff Beck  
The Jeff Beck Broadcasting Group, LLC  
Post Office Box 863  
Albertville, AL 35950

Licensee/Applicant: **The Jeff Beck Broadcasting Group, LLC (Rainbow City Media, LLC, Gadsden Radio Media, LLC, and Quality Properties, LLC)**

Waiver and Refund of Fiscal Year (FY) 2013 Late Penalties for Regulatory Fees

Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1), 1.1164)

Stations: Numerous

Date Request Filed: Dec. 18, 2013

Date Regulatory Fees Paid: Dec. 4, 2013

Date Late Regulatory Fees Paid: Dec. 4, 2013

Fee Control No.: RROG-13-00015512

Dear Mr. Beck:

This responds to Licensee's *Request*<sup>1</sup> for a waiver and refund of the penalties for late payment of Fiscal Year (FY) 2013 regulatory fees. For the reasons stated below, we deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,<sup>2</sup> and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."<sup>3</sup> Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."<sup>4</sup>

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<sup>1</sup> Email from Jeff Beck, The Jeff Beck Broadcasting Group, LLC, et.al. to ARINQUIRIES (arinquiries@fcc.gov) (Dec. 18, 2013)(*Request*). We note that in seeking a waiver and refund of the penalties, Licensee failed to follow our filing procedures set forth at 47 C.F.R. §§ 0.401(b), 1.1166.

<sup>2</sup> 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

<sup>3</sup> 47 U.S.C. §159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

<sup>4</sup> 47 C.F.R. § 1.1164.

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2013, the deadline for paying regulatory fees was September 20, 2013.<sup>5</sup> Unfortunately, we did not receive and credit Licensee's payment until December 4, 2013. Thereafter, Licensee asked for a waiver and refund of the statutory penalty and charges.

Licensee requests that we waive and refund the late payment charges on the grounds that Licensee is experiencing financial hardship. Licensee is "the sole managing member/owner of all the radio stations. ... One of the companies ... is currently in Chapter 11 Bankruptcy ... for more than 3 years ... the cost for legal representation ... the state of the economy and its impact on sales ... has prevented me from paying ... fees on time."<sup>6</sup>

When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

Repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."<sup>7</sup>

Licensee's assertions do not present valid grounds for relief. First, the penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice. Furthermore, Licensee failed in its duty<sup>8</sup> to present grounds for a waiver of the fee, *i.e.*, compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>9</sup>

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<sup>5</sup> See *FY 2013 Regulatory Fees Due No Later Than September 20, 2013*, Eastern Time, *Public Notice*, DA 13-1797 (Aug. 23, 2013).

<sup>6</sup> *Request*.

<sup>7</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

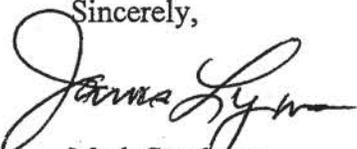
<sup>8</sup> See *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). See also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

<sup>9</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees . . . may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

Turning to Licensee's assertion of financial hardship, a waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>10</sup> In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner<sup>11</sup> to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs, *i.e.*, "good cause" and that the "waiver [of the required fee] would promote the public interest."<sup>12</sup> Licensee's submission, without any evidence supporting the assertions, does not meet the standard.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



For: Mark Stephens  
Chief Financial Officer

<sup>10</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

<sup>11</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>12</sup> 9 FCC Rcd at 5344, ¶ 29; 47 C.F.R. § 1.1166.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 25 2014

OFFICE OF  
MANAGING DIRECTOR

Barry D. Wood, Esq.  
Wood, Martin & Hardy, P.C.  
3300 Fairfax Dr., Suite 202  
Arlington, VA 22201-4400

Licensee/Applicant: **KASA Broadcasting Corp.,  
d/b/a KASA Radio Hogar, Inc.**  
Waiver and Deferral of Payment Request: Financial  
Hardship  
Disposition: **Dismissed** (47 C.F.R. § 1.1166(c) - (e))  
Station: KASA (AM)  
Fee: Fiscal Year (FY) 2013 Regulatory Fee  
Date Request Filed: Sep. 20, 2013  
Date Regulatory Fee Paid: Not paid  
Fee Control No.: RROG-13-00015409  
**Amount Due: See Fee Filer**

Dear Counsel:

This responds to Licensee's *Request*,<sup>1</sup> for waiver and deferment of the required Fiscal Year (FY) 2013 regulatory fees due for Station KASA (AM). For the reasons stated below, we dismiss the *Request*, and demand full payment of all delinquent amounts. Under the Commission's rules, until Licensee makes full payment of the fee, late payment penalty,<sup>2</sup> and charges of collection, additional charges accrue<sup>3</sup> from September 20, 2013, the date of delinquency,<sup>4</sup> and the Commission will withhold action on and thereafter dismiss any pending application.<sup>5</sup>

On September 20, 2013, Licensee submitted its *Request* for a waiver "based on financial hardship," but without furnishing any financial documentation. Instead, Licensee offered it "will voluntarily disclose" financial data, and it asked, in the "unlikely event that the Commission

<sup>1</sup> Letter from Barry D. Wood, Esq., Wood, Martin & Hardy, P.C., Attorneys at Law, 3300 Fairfax Dr., Suite 202, Arlington, VA 22201 to Marlene H. Dortch, Secretary, FCC, 445 12<sup>th</sup> St., S.W., Washington, DC 20554. Attn: Office of Managing Director (Sep. 20, 2013) (*Request*).

<sup>2</sup> 47 U.S.C. § 159(c).

<sup>3</sup> 31 U.S.C. § 3717; 47 C.F.R. § 1.1940 ("the Commission shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717 ... These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.").

<sup>4</sup> FY 2013 Regulatory Fee Due No Later Than September 20, 2013, 11:59 PM Eastern Time (ET), *Public Notice*, DA 13-1796 (Sep. 4, 2013).

<sup>5</sup> 47 C.F.R. § 1.1910(a)(2) & (3) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.").

should deny [the request for waiver, that the *Request*] be considered as a petition, due to financial hardship, for deferral of any duty to pay the regulatory fees for FY 2013." Licensee's submission is fatally defective.<sup>6</sup>

Under 47 C.F.R. § 1.1166, we dismiss<sup>7</sup> and impose the statutory penalty<sup>8</sup> because Licensee's submission of a request for a waiver based on financial hardship did not include either a petition to defer payment *supported by documentation of the financial hardship or the full fee.*

Additionally, we dismiss because Licensee is delinquent in paying fees due in past years (47 C.F.R. §§ 1.1164(e)<sup>9</sup> and 1.910(a)(2) & (3)). This is not the first time we notified Licensee of unpaid delinquent debt and that the consequences of failing to pay the debts<sup>10</sup> is withholding of action on and dismissal of pending applications.

We need not address Licensee's request for confidential treatment of financial data that it failed to submit.

Licensee is delinquent in paying the FY 2013 regulatory fee, thus charges continue to accrue on that amount until Licensee pays the debt in full. Furthermore, under the law,<sup>11</sup> we will apply debt collection procedures.<sup>12</sup> Refer to the Commission's fee filer website to determine a payoff, and immediately make full payment with a Form 159.<sup>13</sup> We encourage Licensee to resolve all outstanding debts.

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<sup>6</sup> 47 C.F.R. § 1.1166; *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) ("burden is on the applicant seeking waiver of ... rules to plead specific facts and circumstances which would make the general rule inapplicable"); see *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."); see also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.").

<sup>7</sup> 47 C.F.R. 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.").

<sup>8</sup> 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferrals of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. \* \* \* The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.").

<sup>9</sup> 47 U.S.C. § 159(c)(2); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

<sup>10</sup> Our records show that Licensee is delinquent in paying FY 2010 regulatory fees [See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time (ET), *Public Notice*, DA 10-1451 (Aug. 9, 2010)], and FY 2012 regulatory fees [See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012)], (with late payment penalties) and the accrued interest, penalties, and charges of collection. If this information is incorrect, please provide evidence of payment.

<sup>11</sup> See 47 C.F.R. § 1.1901, *et seq.*

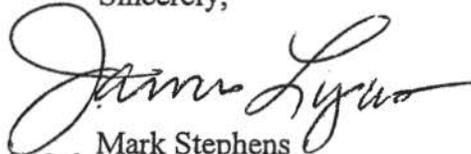
<sup>12</sup> See 31 C.F.R. § 3717.

<sup>13</sup> Form 159 with complete instructions is at <http://www.fcc.gov/fees/form159.html>.

Because Licensee is delinquent in paying a debt owed the United States, this provides notification that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted<sup>14</sup> until it pays all delinquent debts or it makes other satisfactory arrangements.<sup>15</sup>

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
FIR: Chief Financial Officer

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<sup>14</sup> See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ..."); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

<sup>15</sup> See 47 C.F.R. § 1.1914 ("If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 30 2014

OFFICE OF  
MANAGING DIRECTOR

Terry Mathis, President  
KYWN Radio, Inc., a/k/a/  
Blue Turf Broadcasting, Inc.  
C/O Putbrese Hunsaker & Trent, P.C.  
200 South Church Street  
Woodstock, VA 22664

Licensee/Applicant: **KYWN Radio, Inc., a/k/a  
Blue Turf Broadcasting, Inc., a/k/a Terry Mathis  
d/b/a Blue Turf Broadcasting, Inc.**  
Waiver Request; Financial Hardship  
Disposition: **Dismissed** (47 U.S.C. § 159(c)(2); 47  
C.F.R. § 1.1166)  
Station: KYWN  
Fee(s): Fiscal Year (FY) 2013 Regulatory Fees  
Date Request Filed: Sep. 20, 2013  
Date Regulatory Fee(s) Paid: Not Paid  
Fee Control No.: RROG-13-00015375  
Debt Amount: \$ 5,591.88

Dear Mr. Mathis:

This responds to Licensee's *Request*<sup>1</sup> to waive the Fiscal Year (FY) 2013 regulatory fees or, in the alternative, to defer payment without penalty until December 1, 2013. For the reasons stated below, we dismiss the *Request* (which includes dismissal of the request for deferment); however, we acknowledge Licensee's *Payment Plan Request*<sup>2</sup> to pay the fee and accrued charges in installments, and we provide our decision separately.

On September 17 and 20, 2013, Licensee submitted its Request to waive the FY 2013 regulatory fee due to financial hardship. Licensee asserted its "total net revenue in 2012 was approximately [a stated amount redacted for purposes of this letter]. ... And ... in 2013 the income has been similar ... It would be in the station's and community's best interest to waive this fee ... the fee would create a hardship."<sup>3</sup> Licensee failed to include required supporting financial documentation.

<sup>1</sup> Emails from Terry Mathis (terrywmathis@gmail.com) to ARINQUIRIES (arinquiries@fcc.gov)(Sep. 17 & 20, 2013) (*Request*). Licensee's submission by email does not comply with the Commission's rules (47 C.F.R. § 1.1166(a)(2)).

<sup>2</sup> Email from Brenda Cruz (bcruz512@hotmail.com) on behalf of KYWN Radio, Inc., a/k/a Blue Turf Broadcasting, Inc. to ARINQUIRIES (arinquiries@fcc.gov)(Jul. 9, 2014) (*Payment Plan Request*).

<sup>3</sup> *Request*.

Under 47 C.F.R. § 1.1166, we dismiss<sup>4</sup> and impose the statutory penalty<sup>5</sup> because Licensee's submission of a request for a waiver based on financial hardship did not include either a petition to defer payment *supported by documentation of the financial hardship or the full fee*.

Licensee is delinquent in paying the FY 2013 regulatory fee, thus charges continue to accrue on that amount until Licensee pays the debt in full. Furthermore, under the law,<sup>6</sup> we will apply debt collection procedures.<sup>7</sup> Refer to the Commission's fee filer website to determine a payoff, and either immediately make full payment with a Form 159<sup>8</sup> or comply fully with our terms in response to Licensee's *Payment Plan Request*.

Because Licensee is delinquent in paying a debt owed the United States, this provides notification that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted<sup>9</sup> until it pays all delinquent debts or it makes other satisfactory arrangements.<sup>10</sup>

We address Licensee's *Payment Plan Request* separately.

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<sup>4</sup> 47 C.F.R. 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.")

<sup>5</sup> 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferments of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. \* \* \* The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.")

<sup>6</sup> See 47 C.F.R. § 1.1901, *et seq.*

<sup>7</sup> See 31 C.F.R. § 3717.

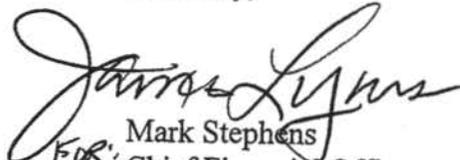
<sup>8</sup> Form 159 with complete instructions is at <http://www.fcc.gov/fees/form159.html>.

<sup>9</sup> See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ..."); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.")

<sup>10</sup> See 47 C.F.R. § 1.1914 ("If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.")

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995

Sincerely,

  
For: Mark Stephens  
Chief Financial Officer

Copy furnished:

John C. Trent, Esq.  
Putbrese Hunsaker & Trent, P.C.  
200 South Church Street  
Woodstock, VA 22664

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 17 2014

OFFICE OF  
MANAGING DIRECTOR

Michael Sherman  
General Manager  
Lincoln Broadcasting, Co.  
100 Valley Drive  
Brisbane, CA 94005

Licensee/Applicant: **Lincoln Broadcasting, Co.**  
Waiver Request: Late Payment Penalty;  
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),  
1.1164, 1.1167)  
Station: KTSF  
Fee: Fiscal Year (FY) 2013 Regulatory Fee Late  
Fee  
Date Request Filed: Dec. 9, 2013  
Date Regulatory Fee Paid: Dec. 23, 2013  
Date Late Penalty Fee Paid: Dec. 23, 2013  
Fee Control No.: RROG-13-00015522

Dear Mr. Sherman:

This responds to Licensee's *Request*<sup>1</sup> for waiver and refund of the penalties for late payment of FY 2013 regulatory fees. For the reasons stated below, we deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,<sup>2</sup> and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."<sup>3</sup> Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."<sup>4</sup>

<sup>1</sup> Email from Michael Sherman ([msherman@ktsftv.com](mailto:msherman@ktsftv.com)), General Manager, KTSF Television, 100 Valley Drive, Brisbane, CA 94005 to ARINQUIRIES ([arinquiries@fcc.gov](mailto:arinquiries@fcc.gov)) (Dec. 9, 2013)(*Request*). Licensee's request for waiver submitted by email does not comply with the Commission's rules (47 C.F.R. § 1.1166(a)(2)).

<sup>2</sup> 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

<sup>3</sup> 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1); 1.1164.

<sup>4</sup> 47 C.F.R. § 1.1164.

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2013, the deadline for paying regulatory fees was September 20, 2013.<sup>5</sup> Licensee made several attempts to process payment; unfortunately, we did not receive and credit Licensee's payment until December 23, 2013. Nonetheless, Licensee asked for a waiver and refund of the statutory penalty.

Licensee requests that we waive and refund the late payment charges on the grounds that it "processed the payment online via ACH on Sept 12 for the execution date of Sept 13, 2013 [and that it had received] confirmation of submission ... the payment was not successfully processed and the amount due [remained] outstanding. [Thereafter, on December 9, 2013,] Licensee processed a second] payment in full."<sup>6</sup> Licensee asserts it "processed the original payment in a timely fashion. [However, Licensee's] bank did not inform [it] that the payment was not processed. [Nonetheless, Licensee asserts that it] acted in good faith by meeting the original payment deadline."<sup>7</sup>

When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

The Commission's records show that the two earlier bank transactions were coded as "not authorized" and returned. Moreover, Licensee failed to provide "suitable proof"<sup>8</sup> that the payment was properly completed or that the failure to complete the process was the result of bank error.<sup>9</sup> Accordingly, Licensee did not provide a basis for a waiver.

Every licensee is obliged to make the fee payment by the deadline. In such cases, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.<sup>10</sup> Further, although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee made payment. The penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was

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<sup>5</sup> See FY 2013 Regulatory Fee Due No Later Than September 20, 2013, 11:59 PM Eastern Time (ET), *Public Notice*, DA 13-1796 (Sep. 4, 2013).

<sup>6</sup> *Request*.

<sup>7</sup> *Id.*

<sup>8</sup> 47 C.F.R. § 1.1167(a).

<sup>9</sup> 47 C.F.R. § 1.1164.

<sup>10</sup> See *XO Communications, LLC* (OMD, Nov. 10, 2010).

knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"<sup>11</sup> which Licensee does not raise. Thus, we deny Licensee's *Request*.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in cursive script that reads "Mark Stephens".

SEP: Mark Stephens  
Chief Financial Officer

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<sup>11</sup> *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 16 2014

OFFICE OF  
MANAGING DIRECTOR

Ms. Kathy Lynam  
NPG of Missouri, LLC  
825 Edmond Street  
Saint Joseph, MO 64501

Licensee/Applicant: NPG of Missouri, LLC  
Waiver Request: Late Payment Penalty  
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),  
1.1164)  
Stations: KQFX-LD, K18KK-D, KMIZ, and  
Auxiliary Broadcasting Stations: KC2649, WIL65,  
and WIL66  
Fee: Fiscal Year (FY) 2013 Regulatory Fee Late  
Fee  
Date Request Filed: Nov. 26, 2013  
Date Regulatory Fee Paid: Nov. 26, 2013  
Date Late Penalty Fee Paid: Dec. 2, 2013  
Fee Control No.: RROG-13-00015492

Dear Ms. Lynam:

This responds to Licensee's *Request*<sup>1</sup> for a waiver and refund of the penalties for late payment of the Fiscal Year (FY) 2013 regulatory fees. For the reasons stated below, we deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,<sup>2</sup> and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."<sup>3</sup> Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."<sup>4</sup>

<sup>1</sup> Email from Kathy Lynam, Business Manager, NPG of Missouri, LLC (kathy.lynam@kmiz.com) to ARINQUIRIES (ARINQUIRIES@fcc.gov) (Nov. 26, 2013)(*Request*). We note that in seeking a waiver and refund of the penalties, Licensee failed to follow our filing procedures set forth at 47 C.F.R. §§ 0.401(b), 1.1166.

<sup>2</sup> 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

<sup>3</sup> 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

<sup>4</sup> 47 C.F.R. § 1.1164.

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2013, the deadline for paying regulatory fees was September 20, 2013.<sup>5</sup> Unfortunately, we did not receive and credit Licensee's payment until December 2, 2013. Thereafter, Licensee asked for a waiver and refund of the statutory penalty.

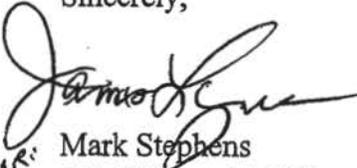
Licensee requests that we waive and refund the late payment charges on the grounds that Licensee's "corporate offices [established procedures with its bank to] 'block' ... any payment directly coming out of [Licensee's] account, instead of a 'filter' which would have notified the corporate offices of the payment and they would have authorized the payment." As a result, "the payment [Licensee initiated] did not go through and a debit voucher was issued with the return code of 'not authorized.'"<sup>6</sup>

When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

Licensee's assertions do not present valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

  
F.R.: Mark Stephens  
Chief Financial Officer

<sup>5</sup> See FY 2013 Regulatory Fee Due No Later Than September 20, 2013, 11:59 PM Eastern Time (ET), *Public Notice*, DA 13-1796 (Sep. 4, 2013).

<sup>6</sup> *Request*.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 16 2014

OFFICE OF  
MANAGING DIRECTOR

Sharon R. Porter, CPA  
Tax Manager  
PowerNet Global Communications  
100 Commercial Drive  
Fairfield, OH 45014

Licensee/Applicant: PNG Telecommunications, Inc.  
Waiver Request: Late Payment Penalty  
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1), 1.1164)  
Stations: N/A  
FRN: 0003778289  
Fee: Fiscal Year (FY) 2010 Regulatory Fee Late Fee  
Date Request Filed: Jun. 21, 2013  
Date Regulatory Fee Paid: Nov. 2, 2012  
Date Late Penalty Fee Paid: Jun. 19, 2013  
Fee Control No.: RROG-13-00015276

Dear Ms. Porter:

This responds to Licensee's *Request*<sup>1</sup> for waiver and refund of the penalties for late payment of FY 2010 regulatory fees. For the reasons stated below, we deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,<sup>2</sup> and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."<sup>3</sup> Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."<sup>4</sup>

<sup>1</sup> Letter from Sharon E. Porter, Tax Manager, PNG Telecommunications, Inc., 100 Commercial Drive, Fairfield, OH 45014 to Marlene Dortch, Secretary, FCC, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12<sup>th</sup> St., ST, Room TW-B204, Washington, DC 20554 (June 21, 2013) (*Request*).

<sup>2</sup> 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

<sup>3</sup> 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

<sup>4</sup> 47 C.F.R. § 1.1164.

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2010, the deadline for paying regulatory fees was August 30, 2010.<sup>5</sup> Unfortunately, we did not receive and credit Licensee's payment until November 2, 2012, and June 16, 2013 respectively. Thereafter, Licensee asked for a waiver and refund of the statutory penalty and charges.

Licensee requests that we waive and refund the late payment charges on the grounds that Licensee's "miscalculation of the amount due was an unintentional oversight. [Licensee] inadvertently calculated the wrong amount on Line 11 of Form 159-W, but did not do so with malice or intent to deceive."<sup>6</sup>

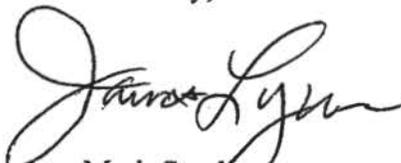
When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

Repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."<sup>7</sup>

Licensee's assertions do not present valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

<sup>5</sup> See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

<sup>6</sup> *Request*.

<sup>7</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone (OMD)*, Apr. 22, 2010; *Istel, Inc. (OMD)*, Apr. 22, 2010).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 25 2014

OFFICE OF  
MANAGING DIRECTOR

Simon Healy, CFO  
LoopUp/Ring2 Communications, Ltd.  
78 Kingsland Road, 1<sup>st</sup> Floor  
London E2 8DP

Licensee/Applicant: **Ring2 Communications  
LLC/LoopUp**  
Waiver Request; Late Payment Penalties  
Disposition: **Denied** (47 U.S.C. § 159(c)(1); 47  
C.F.R. § 1.1164(c))  
Station: N/A  
Fee: Fiscal Year FY 2013  
Regulatory Fee Late Fees  
Date Request Filed: dated Feb. 21, 2014; rec'd Mar.  
4, 2014  
Date Regulatory Fees Paid: Feb. 21, 2014  
Date Regulatory Late Penalties Paid: Feb. 21, 2014  
Fee Control No.: RROG-13-00015467

Dear Mr. Healy:

This responds to Licensee's *Request*<sup>1</sup> for waiver and refund of the penalties for late payment of Fiscal Year (FY) 2013 regulatory fees.<sup>2</sup> For the reasons stated below, we deny the *Request*.

On March 4, 2014, the Commission received Licensee's *Request*, dated February 21, 2014, which asked for a waiver of the penalties imposed for late payment of the FY 2013 regulatory fee. Specifically, Licensee asserts that it was unaware of the debt until the week of February 17, 2014, and that it then made full payment of the fee and statutory charges. Licensee apologized for the delay and explained the "US-based Controller who would have been responsible ... is no longer with the business, and th[e] requirement was not handed over [to another staff member]. ... [Licensee] understand[s] that [the Commission does] not mail ... reminders or invoices ... th[at] makes it extremely difficult ... to meet ... requirements ... th[e] penalty ... is a significant sum to a small ... business [that] is loss-making."<sup>3</sup>

<sup>1</sup> Letter from Simon Healy, CFO, Ring2 Communications, LLC, 1<sup>st</sup> Floor, 78 Kingsland Road, London, E2 8DP, to Marlene H. Dortch, Secretary, FCC, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Room TW-B204, Washington, DC 20554 (Feb. 21, 2014, rec'd Mar. 4, 2014)(*Request*).

<sup>2</sup> Licensee did not request a refund (see 47 C.F.R. § 1.1160); however, our disposition of the matter renders that matter moot.

<sup>3</sup> *Request*.

Although we deny the *Request*, we are sympathetic to Licensee's business difficulties, including the departure of a key employee and the assertion that the penalty will present a financial hardship.

When we evaluate Licensee's first issue, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

The Commission establishes the final day on which payment may be made before it is late, *i.e.*, a deadline, after which the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164 will be imposed, and interest, penalties, and charges of collection will accrue under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2013, the deadline for paying regulatory fees was September 20, 2013;<sup>4</sup> the Commission did not receive Licensee's payment for those regulatory fees until February 21, 2014.

Moreover, repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."<sup>5</sup>

We now turn to Licensee's suggestion that payment of the penalty creates a hardship. Unfortunately, Licensee's submission fails to show good cause sufficient for the Commission to find that a waiver will serve the public interest.<sup>6</sup> Licensee did not carry its burden<sup>7</sup> of meeting the standard, and the Commission will not speculate to fill gaps in information that Licensee should have provided.<sup>8</sup>

<sup>4</sup> See FY 2013 Regulatory Fee Due No Later Than September 20, 2013, 11:59 PM Eastern Time (ET), *Public Notice*, DA 13-1796 (Sep. 4, 2013).

<sup>5</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

<sup>6</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

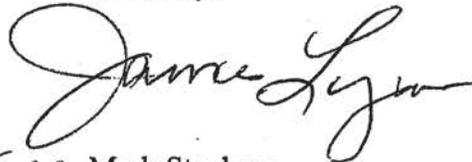
<sup>7</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>8</sup> *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."); see also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.<sup>9</sup> The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>10</sup> In an appropriate situation, fee relief may be granted based on a "sufficient showing of financial hardship."<sup>11</sup> In such matters, however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."<sup>12</sup> Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, e.g., a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>13</sup> Licensee failed to present any of this information necessary to meet our standard,<sup>14</sup> thus we deny the *Request*.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



FOR: Mark Stephens  
Chief Financial Officer

Copy furnished:  
Ring2 Communications  
282 2<sup>nd</sup> Street, Suite 200  
San Francisco, CA 94105

<sup>9</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also 9 FCC Rcd 5344, ¶ 29.

<sup>10</sup> *Id.*

<sup>11</sup> 10 FCC Rcd at 12761-62, ¶ 13.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 47 C.F.R. § 1.1166; *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) ("burden is on the applicant seeking waiver of ... rules to plead specific facts and circumstances which would make the general rule inapplicable"); see *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."); see also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 9 2014

OFFICE OF  
MANAGING DIRECTOR

James Levash  
Senior Staff Accountant  
Spiralight Network, LLC  
103 E. Walnut St., Suite 301  
Post Office Box 1060  
Green Bay, WI 54305-1060

Licensee/Applicant: **Spiralight Network, LLC**  
Waiver, Reduction and Refund: Late Payment  
Penalty Fiscal Year (FY) 2011, FY 2012, and FY  
2013 Regulatory Fees  
Station: N/A  
Disposition: **Denied** (47 U.S.C. § 159(c)(1); 47  
C.F.R. § 1.1164)  
Fees: Fiscal Year (FY) 2011, FY 2012, and FY  
2013 Late Payment Penalty  
Date Request Filed: (Oct. 24, 2013, filed  
Oct. 30, 2013)  
Date Regulatory Fees Paid: Oct. 18, 2013  
Date Late Regulatory Fees Paid: Oct. 18, 2013  
Fee Control No.: RROG-13-00015466

Dear Mr. Levash:

This responds to Licensee's *Request*<sup>1</sup> to waive or reduce, and then refund, the penalties and associated charges for late payment of Fiscal Year (FY) 2011, FY 2012 and FY 2013 regulatory fees. For the reasons stated below, we deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,<sup>2</sup> and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."<sup>3</sup> Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."<sup>4</sup>

<sup>1</sup> Letter from James Levash, Spiralight Network, LLC, to Marlene Dortch, Secretary, FCC, Attn: Office of Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12<sup>th</sup> Street, S.W., Room TW-B204, Washington, DC 20554 (Oct. 24, 2013, filed Oct. 30, 2013)(*Request*).

<sup>2</sup> 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

<sup>3</sup> 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

<sup>4</sup> 47 C.F.R. § 1.1164.

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2011, the deadline for paying regulatory fees was September 16, 2011,<sup>5</sup> for FY 2012, the deadline for paying regulatory fees was September 13, 2012,<sup>6</sup> and for FY 2013, the deadline for paying regulatory fees was September 20, 2013.<sup>7</sup> We did not receive Licensee's payments by those deadlines, thus we assessed the mandatory penalties, and when the debts remained delinquent, we assessed additional charges. Licensee's payment for the FY 2012 and FY 2013 regulatory fees were credited on October 18, 2013, and the payment for the FY 2011 regulatory fee was credited on October 23, 2013.

Even so, Licensee requests that we waive the late payment charges on the grounds that "Spiralight was not receiving any notification of the late filing[, instead,] notices were ... sent to some law office ... in Arlington, VA. Spiralight was not aware of this as there was a change in positions. 2011, 2012 & 2013 [fees] were never filed, until [Licensee] received a collection letter."<sup>8</sup>

When we evaluate such matters, we look to whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

First, the Commission does not send reminder notices by mail or email, so the absence of such notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.<sup>9</sup> Moreover, repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and they will not be excused for violations thereof, absent clear mitigating circumstances."<sup>10</sup>

Next, Licensee did not raise valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the

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<sup>5</sup> See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

<sup>6</sup> See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

<sup>7</sup> See FY 2013 Regulatory Fees Due No Later Than September 20, 2013, Eastern Time, *Public Notice*, DA 13-1797 (Aug. 23, 2013).

<sup>8</sup> *Request*.

<sup>9</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009); Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009); Fee Filer Mandatory for FY 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009); Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

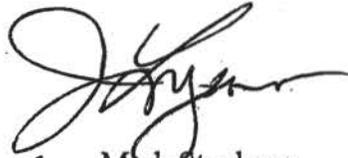
<sup>10</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

---

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', written in a cursive style.

FR: Mark Stephens  
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554  
JUL 17 2014

OFFICE OF  
MANAGING DIRECTOR

Vincent Shiflet  
2024 S. Cascade  
Kennewick, WA 99337

Licensee/Applicant: **Vincent Shiflet**  
Waiver Request: Late Payment Penalty  
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),  
1.1164)  
Stations: K229AD, K237DP, K266AJ, K272ED,  
and K297BE  
Fee: Fiscal Year (FY) 2013 Regulatory Fee Late  
Fee  
Date Request Filed: Oct. 21, 2013  
Date Regulatory Fee Paid: Sep. 27, 2013  
Date Late Penalty Fee Paid: Sep. 27, 2013  
Fee Control No.: RROG-13-00015446

Dear Mr. Shiflet:

This responds to Licensee's *Request*<sup>1</sup> for a waiver and refund of the penalties for late payment of Fiscal Year (FY) 2013 regulatory fees. For the reasons stated below, we deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,<sup>2</sup> and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."<sup>3</sup> Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."<sup>4</sup>

<sup>1</sup> Letter from Vincent Shiflet, 2024 S. Cascade, Kenneick, WA 99337, to Marlene Dortch [received at the FCC, Office of the Managing Director, 445 12th St. S.W., Washington, DC 20554] (Sep. 27, 2013, *rec'd* Oct. 21, 2013) (*Request*). Licensee used the street number, 2024, as its return address in the *Request*. That information is different from the street number address in the Commission's records, which is 4024. Until Licensee amends the record, we will use 4024 S. Cascade.

<sup>2</sup> 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

<sup>3</sup> 47 U.S.C. §159(c)(1); 47 C.F.R. §§ 1.1157(c)(1); 1.1164.

<sup>4</sup> 47 C.F.R. § 1.1164.

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2013, the deadline for paying regulatory fees was September 20, 2013.<sup>5</sup> Unfortunately, we did not receive and credit Licensee's payment until September 27, 2013. Thereafter, License asked for a waiver and refund of the statutory penalty.

Licensee requests that we waive and refund the late payment charges on the grounds that Licensee "lost track of time [in September 2013] and missed the deadline date to pay [the] fees."<sup>6</sup>

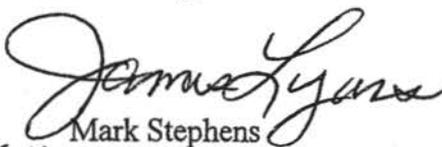
When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not.

Repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."<sup>7</sup>

Licensee's assertions do not present valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

  
Mark Stephens  
For: Chief Financial Officer

<sup>5</sup> See FY 2013 Regulatory Fee Due No Later Than September 20, 2013, 11:59 PM Eastern Time (ET), *Public Notice*, DA 13-1796 (Sep. 4, 2013).

<sup>6</sup> *Request*.

<sup>7</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUL 25 2014

OFFICE OF  
MANAGING DIRECTOR

Tom Tabback, President, GM  
Tabback Broadcasting Company, Inc.  
Post Office Box 4259  
Sedona, AZ 86340

Licensee/Applicants: **Tabback Broadcasting  
Company, Inc.**

Waiver Request: Reduction of (FY) 2013 Reg Fees

Disposition: **Denied** ( 47 C.F.R. § 1.1166)

Station: KAZM (AM)

FRN: 0006209217

Fee: Fiscal Year (FY) 2013 Regulatory Fee

Date Request Filed: Sept. 18, 2013

Date Regulatory Fees Paid: Sept. 18, 2013

Fee Control No.: RROG-13-00015386

Dear Mr. Tabback:

This responds to Licensee's *Request*<sup>1</sup> for reduction of the required statutory Fiscal Year (FY) 2013 regulatory fee. Our records show that Licensee paid the required FY 2013 regulatory fee on September 18, 2013. For the reasons stated below, we deny the *Request*.

On February 18, 2014, Licensee submitted its *Request* to reduce the amount of the regulatory fee asserting financial hardship based on its assertion that the "current economy ... reduced [Licensee's] income [about 58% since 2007]. Making ends ... meet has been increasing hard. ... asking for Fee Reduction, so [Licensee] can stop the Debt Ball from rolling down hill."<sup>2</sup>

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<sup>1</sup>Letter from Tom Tabback, Tabback Broadcasting Company, Inc., PO Box 4259 Sedona, AZ 86340, to Marlene Dortch, Secretary, FCC, Attn: Office of Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12<sup>th</sup> St. SW, Room TW-B204, Washington, DC 20554 (Sep. 18, 2013) (*Request*).

<sup>2</sup>*Request*.

Licensee did not include supporting financial documentation, thus it failed to show good cause sufficient for the Commission to find that a waiver will serve the public interest.<sup>3</sup> Licensee did not carry its burden<sup>4</sup> of meeting the standard, and the Commission will not speculate to fill gaps in information that Licensee should have provided.<sup>5</sup>

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.<sup>6</sup> The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>7</sup> In an appropriate situation, fee relief may be granted based on a "sufficient showing of financial hardship."<sup>8</sup> In such matters, however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."<sup>9</sup> Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>10</sup> Licensee failed to present any of this information necessary to meet our standard.<sup>11</sup> Accordingly, we deny the *Request* for a *fee reduction* of the required regulatory fee.

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<sup>3</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

<sup>4</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>5</sup> *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."); see also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

<sup>6</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also 9 FCC Rcd 5344, ¶ 29.

<sup>7</sup> *Id.*

<sup>8</sup> 10 FCC Rcd at 12761-62, ¶ 13.

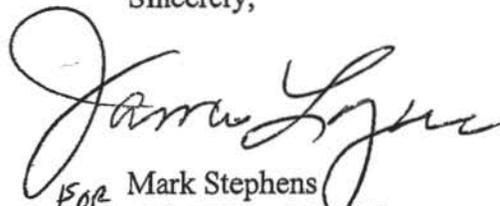
<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. § 1.1166; *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) ("burden is on the applicant seeking waiver of ... rules to plead specific facts and circumstances which would make the general rule inapplicable"); see *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."); see also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.").

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

  
FOR Mark Stephens  
Chief Financial Officer